

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ATARI, INC.,

a Delaware corporation, and

MIDWAY MFG. CO.,

an Illinois corporation,

Plaintiffs,

vs.

NORTH AMERICAN PHILIPS  
CONSUMER ELECTRONICS CORP.,

a Tennessee corporation, and

PARK TELEVISION d/b/a/  
PARK MAGNAVOX HOME ENTERTAINMENT  
CENTER,

an Illinois partnership, and

ED AVERETT,

an individual,

Defendants.

Civil Action No.  
81 C 6434  
VOL. II

DEPOSITION OF HIDEYUKI NAKAJIMA

1 BE IT REMEMBERED: That pursuant to subpoena in  
2 re deposition, and by stipulation of respective counsel, and  
3 on Wednesday, the 11th day of August, 1983, commencing at the  
4 hour of 9:15 a.m. of said day, before me, Marcia Lynne Hunter,  
5 C.S.R., License Number C-2801, a Notary Public, personally  
6 appeared HIDEYUKI NAKAJIMA, called as a witness herein, at  
7 the offices of Pillsbury, Madison & Sutro, 333 West Santa  
8 Clara Street, San Jose, California, and having been previously  
9 duly sworn by me, was examined as a witness in said cause.

APPEARANCES

For PLAINTIFF  
ATARI, INC.:

KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601  
By: DAVID E. SPRINGER, ESQ.

For PLAINTIFF  
MIDWAY MFG. CO.:

WELSH & KATZ  
Suite 1625  
135 South LaSalle Street  
Chicago, Illinois 60603  
By: A. SIDNEY KATZ, ESQ.

For DEFENDANTS  
NORTH AMERICAN  
PHILIPS CONSUMER  
ELECTRONICS CORP.,  
PARK TELEVISION  
dba PARK HOME  
ENTERTAINMENT  
CENTER & ED AVERETT:

REUBEN & PROCTOR  
19 South LaSalle Street  
Chicago, Illinois 60603  
By: JAMES H. ALESIA, ESQ.  
and  
NEUMAN, WILLIAMS, ANDERSON & OLSON  
77 West Washington Street  
Chicago, Illinois 60602  
By: JAMES T. WILLIAMS, CO-COUNSEL  
and

THOMAS A. BRIODY,  
CORPORATE PATENT COUNSEL  
North American Philips Corporation  
580 White Plains Road  
Tarrytown, New York 10591

For NAMCO-AMERICA  
& HIDEYUKI NAKAJIMA:

LIMBACH, LIMBACH & SUTTON  
2001 Ferry Building  
San Francisco, California  
By: KARL A. LIMBACH, ESQ., and  
RONALD L. YIN, ESQ.

and

NAMCO-AMERICA, INC.  
343 Gibraltar Drive  
Sunnyvale, California 94086  
By: DENNIS WOOD, VICE PRESIDENT &  
GENERAL COUNSEL

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121 A three-page Telex sent to Mr. Jarocki, signed by Mr. Nakajima.	166
122 A one-page letter from Mr. Paul to Mr. Nakajima.	174
123 A two-page letter dated April 20, 1983, to David Marofske from Dennis Wood.	176
124 A one-page letter from Irving S. Rappaport to Dennis Wood, dated July 25, 1983.	178
125 A one-page letter from Mr. Nakajima to Mr. Marofske, dated July 29, 1983.	178

(All exhibits retained by Mr. Alesia.)

1                    HIDEYUKI NAKAJIMA,

2    having been previously duly sworn by the Notary Public to tell  
3    the truth, testified further as follows:

4                    EXAMINATION BY MR. ALESIA (resumed)

5    Q     Mr. Nakajima, this is the continuation of the deposition  
6    that was started yesterday. You understand you are still  
7    under oath and still obligated to tell the truth under threat  
8    of perjury?

9    A     Yes.,

10   Q     Mr. Nakajima, did you have occasion to write David  
11   Marofske, the president of Midway Manufacturing Company, in  
12   December of 1981, with regard to requesting that some of the  
13   rights in Pac-Man be returned to NAMCO, Ltd., and NAMCO-  
14   AMERICA?

15   A     I have.

16   Q     Did you do that?

17   A     I don't know. I don't remember. I might have.

18           MR. ALESIA: Ms. Reporter, will you mark this as  
19   Defendants' Exhibit No. 115, please, a letter dated December  
20   24th, 1981, on the letterhead of NAMCO-AMERICA to David  
21   Marofske from Mr. Nakajima.

22           MR. SPRINGER: Off the record a second.

23           (Discussion off the record.)

24                    (WHEREUPON, a letter dated December  
25                    24th, 1981, on the letterhead of NAMCO-  
26                    AMERICA, to David Marofske from Mr.  
                  Nakajima, was marked as Defendants'  
                  Exhibit No. 115 for identification.)

27   Q     (By Mr. Alesia) Mr. Nakajima --

28           MR. SPRINGER: Do you have just one copy?

1 Q (By Mr. Alesia) -- will you look at Exhibit 115.

2 A Yes.

3 MR. LIMBACH: Counsel, I notice that the document  
4 is stamped confidential, trial counsel only. Does the court  
5 order under which this was produced permit Mr. Briody to be  
6 here?

7 MR. ALESIA: Well, if you -- if Mr. Katz wishes to  
8 abide by the court order in Chicago regarding this matter,  
9 as limited to trial counsel only, I would also ask everybody  
10 who is not a trial counsel in the case to exclude themselves,  
11 which would include Mr. Wood. Especially Mr. Wood, since he  
12 is a potential deponent in this case.

13 MR. LIMBACH: Mr. Wood is here as counsel for the  
14 witness and I think has the right to stay for that purpose.

15 MR. ALESIA: I thought that was your function. He  
16 is not a trial counsel in this case. You are the counsel for  
17 the witness. This is --

18 MR. LIMBACH: Well, your orders between -- relate  
19 to trial counsel --

20 MR. ALESIA: It's not my order.

21 MR. KATZ: I would like to stay with the order that  
22 was entered by the court, but on this particular document,  
23 this is a document that originated with NAMCO-AMERICA. And  
24 since Mr. Wood is counsel for NAMCO-AMERICA. I think it would  
25 be appropriate for him to stay in the room, but I think I  
26 would like to have Mr. Briody leave.

27 MR. ALESIA: Well, Mr. Katz, you can't have it both  
28 ways. The stamp -- this is the second order and it's stamped

1 by you "Confidential, trial counsel only."

2 MR. KATZ: That's right.

3 MR. ALESIA: Mr. Wood is a potential deponent. He  
4 is not trial counsel of record for this case. The witness is  
5 represented by an outside attorney here. I have no objection  
6 if he stays. But, I mean, you can't have it both ways.

7 MR. KATZ: Well, I think you are missing the point,  
8 Mr. Alesia, because the order was for the protection of con-  
9 fidential information. This is information from NAMCO.  
10 Dennis Wood works for NAMCO. He's counsel, house counsel, for  
11 NAMCO and he's an officer of NAMCO.

12 MR. LIMBACH: More importantly, he is counsel to  
13 the witness, who is attending here today.

14 MR. ALESIA: What is your function here then,  
15 Counsel? I thought that you were outside counsel for the  
16 witness.

17 MR. LIMBACH: That's right.

18 MR. ALESIA: I have no objection if you stay and  
19 along with your associate or outside counsel. I object to  
20 Mr. Wood being here, because Mr. Wood is a potential deponent  
21 in this case, and he is not trial counsel.

22 MR. LIMBACH: Your order in Chicago relating to  
23 restrictions of things between the parties is not an order,  
24 as far as I know, that is binding on a third party witness  
25 who you are dragging into a deposition here.

26 So, we are here as a witness, and we will behave our-  
27 selves as a witness, and whatever you have as an order re-  
28 lating to trial counsel only I understand applies between the



1 parties and what they're doing.

2 There is a separate order entered by our local court  
3 that affects NAMCO, and we'll live by that.

4 MR. ALESIA: It's my understanding that separate  
5 order that affects NAMCO also is the same type of order as  
6 what is entered in the court in Chicago, that there's a two-  
7 tier order, one for confidential documents and one for con-  
8 fidential, trial counsel only.

9 MR. LIMBACH: I understand the document that you  
10 have marked as an exhibit here is a document produced by  
11 Midway.

12 MR. ALESIA: That's correct.

13 MR. LIMBACH: And it's got a confidential, trial  
14 counsel only designation applied by Midway.

15 MR. ALESIA: That's correct also.

16 MR. LIMBACH: Okay. I would expect you to live by  
17 that.

18 MR. ALESIA: I am.

19 MR. LIMBACH: That's between you and Mr. Katz,  
20 though.

21 MR. ALESIA: That's right.

22 MR. SPRINGER: Why don't we go off the record a  
23 second.

24 (Discussion off the record.)

25 (WHEREUPON, Mr. Briody left the  
26 deposition room.)

27 (WHEREUPON, the following pages  
28 126 through 216 of the deposition of  
Mr. Nakajima are designated Sensitive  
Confidential and are bound separately  
from this portion of the deposition.)

COUNTY OF SANTA CLARA )

My commission expires Apr. 22, 1985

I, Marcia Lynne Hunter, a Notary Public in and for the County of Santa Clara, State of California, hereby certify that the witness in the foregoing deposition, named HIDEYUKI NAKAJIMA, was duly sworn by me to tell the truth, the whole truth, and nothing but the truth, in the within entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, to the best of my ability, and was thereafter transcribed into typewriting under my direction and supervision.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

Date: August 25, 1983

Marcia Lynne Hunter  
Marcia Lynne Hunter, C.S.R.  
License Number C-2801

The signing of the deposition by the deponent was waived by stipulation at the time of the taking of the deposition.

The deponent personally appeared on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and was given an opportunity to read the deposition. Thereafter, and upon the same date, the deposition was signed by the deponent.

Upon completion of the transcript of the deposition, the deponent was notified that it was ready for signature, but the deposition was not signed by the deponent for the following reason: Deponent did not appear  
Date: 9-30-82